

**EXHIBIT 22  
FILED UNDER SEAL**

**FILED PURSUANT TO COURT ORDER DOC. 362**

HIGHLY CONFIDENTIAL

Page 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :  
et al., :  
Plaintiffs :  
v. : No. 1:23-cv-00108  
GOOGLE, LLC, :  
Defendants. :

HIGHLY CONFIDENTIAL

Monday, August 21, 2023

Video Deposition of CHRISTOPHER KOEPKE,  
taken at the Law Offices of Paul, Weiss,  
Rifkind, Wharton & Garrison LLP, 2001 K St NW,  
Washington, DC, beginning at 9:35 a.m. Eastern  
Standard Time, before Ryan K. Black, Registered  
Professional Reporter, Certified Livenote  
Reporter and Notary Public in and for the  
District of Columbia

Job No. CS6043164

## HIGHLY CONFIDENTIAL

	Page 2	Page 4
1 APPEARANCES:		1 THE VIDEOGRAPHER: Good morning. We are
2		2 going on the record at 9:35 a.m. on August 21st,
3 UNITED STATES DEPARTMENT OF JUSTICE		3 2023. Please note that the microphones are
4 ANTITRUST DIVISION		4 sensitive and may pick up whispering and private
5 BY: KATHERINE CLEMONS, ESQ.		5 conversations. Please mute your phones at this
6 VICTOR LIU, ESQ.		6 time. Audio and video recording will continue to
7 ALVIN CHU, ESQ.		7 take place unless all parties agree to go off the
8 MARK SOSNOWSKY, ESQ. - Via Zoom		8 record.
9 450 5th Street, N.W.		9 This is Media Unit 1 of the
10 Washington, DC 20530		10 video-recorded deposition of Mr. Christopher
11 202.514.2414		11 Koepke in the matter of United States, et al.,
12 katherine.clemons@usdoj.gov		12 versus Google, LLC, filed in the United States
13 victor.liu@usdoj.gov		13 District Court Eastern District of Virginia
14 alvin.chu@usdoj.gov		14 Alexandria Division, Case Number
15 mark.sosnowsky@usdoj.gov		15 1:23-cv-00108-LMB-JFA.
16 Representing - The United States of America		16 My name is Orson Braithwaite,
17		17 representing Veritext Legal Solutions, and I'm
18		18 the videographer. The court reporter is Ryan
19		19 Black, from the firm Veritext Legal Solutions.
20		20 Counsel will now state their appearances
21		21 and affiliations for the record.
22		22 MS. GOODMAN: Martha Goodman, from Paul
23 ALSO PRESENT:		23 Weiss, on behalf of Google LLC.
24 Orson Braithwaite - Legal Videographer		24 MS. MILLIGAN: Heather Milligan, also on
25 Kenneth Whitley - Department of Health and Human		25 behalf of Paul Weiss, for Google.
26 Services		
	Page 3	Page 5
1 INDEX		1 MS. CLEMONS: Katherine Clemons, with
2 TESTIMONY OF: CHRISTOPHER KOEKPKE	PAGE	2 the Department of Justice, on behalf of the
3 By Ms. Goodman.....6		3 United States of America, CMS and the witness.
4 EXHIBITS		4 MR. LIU: Victor Liu, also with the
5 EXHIBIT DESCRIPTION PAGE		5 Department of Justice, on behalf of the United
6 Exhibit 65 a document Bates Numbered		6 States and CMS.
7 CMS-ADS-11906 through 11974...117		7 MR. CHU: Alvin Chu, on behalf of United
8		8 States.
9 Exhibit 66 a document Bates Numbered		9 MR. WHITLEY: Kenneth Whitley, Office of
10 CMS-ADS-23248 through 23337...136		10 General Counsel, Department of Health and Human
11 Exhibit 67 a document Bates Numbered		11 Services.
12 CMS-ADS-59892 through 59893...151		12 MS. GOODMAN: And could the folks
13		13 attending remotely please state your presence?
14 Exhibit 68 a document Bates Numbered		14 MR. SOSNOWSKY: Mark Sosnowsky,
15 CMS-ADS-593107 through 593110..167		15 Department of Justice, and I will be in and out
16 Exhibit 69 a document Bates Numbered		16 of this deposition remotely. So if you lose me,
17 CMS-ADS-183807 through 183811..181		17 please don't -- you can continue.
18		18 THE VIDEOGRAPHER: Thank you.
19 Exhibit 70 a document Bates Numbered		19 Would the court reporter please swear in
20 CMS-ADS-529199 through 529200..190		20 the witness?
21 Exhibit 71 a document Bates Numbered		21 * * *
22 CMS-ADS-189390.....251		22 Whereupon --
23		23 CHRISTOPHER KOEKPKE,
24 Exhibit 72 a document Bates Numbered		24 called to testify, having been first duly sworn
25 CMS-ADS-64968 through 64971....258		25 or affirmed, was examined and testified as
26		

2 (Pages 2 - 5)

## HIGHLY CONFIDENTIAL

	Page 6	Page 8
1	follows: * * *	1 healthcare programs. When we need people, 2 citizens of America to take an action, it is my 3 job to do outreach to help them know what actions 4 they need to take. I could probably go on for 5 the rest of the day with details on that.
3	EXAMINATION	6 Q. I'm sure we'll get to it. How long have 7 you been the director -- is the strategic 8 marketing -- strike that.
4	BY MS. GOODMAN:	9 Is the Strategic Marketing Group abbreviated SMG?
5	Q. Good morning, Mr. Koepke.	10 A. Yes, it is.
6	A. Good morning.	11 Q. Okay. How long have you been director of SMG?
7	Q. Have you been deposed before?	12 A. Approximately nine to ten years.
8	A. I think once. I'm not exactly sure it was a formal deposition, --	13 Q. And prior to serving as director of SMG, what -- what job did you have, if any?
9	Q. Okay.	14 A. I was the deputy director of the 15 Creative Services Group in the Office of 16 Communications at the Centers for Medicare and 17 Medicaid Services.
10	A. -- but yes.	18 Q. And how long were you the deputy 19 director of the Creative Services Group?
11	Q. Was there a court reporter taking down everything you were saying?	20 A. I would say three to four years.
12	A. No, there was not.	21 Q. In your role as director of SMG, who do 22 you report to?
13	Q. Okay. So in this deposition, it's important that you allow me to finish my question before you answer, because our court reporter, Mr. Black, is taking down everything we're saying --	23
14	A. All right.	24
15	Q. -- and he can't take two people talking at the same time. Okay?	25
16	A. All right.	
17	Q. So please let me finish my question before you begin your answer. Okay?	
	Page 7	Page 9
1	A. Okay.	1 A. I report to the deputy director of the 2 Office of Communications.
2	Q. Okay. And the court reporter also cannot record nonverbal answers or half verbal answers, like uh-huh or huh-uh, so please make sure to speak in a -- answer the questions verbally. Okay?	3 Q. And what is that individual's name?
3	A. Okay.	4 A. Mary Wallace.
4	Q. Okay. And I will assume that you understand my questions unless you ask me for a clarification. Okay?	5 Q. How long has Mary Wallace been the 6 person to whom you've -- who you report?
5	A. Okay.	7 A. Nine to ten years.
6	Q. Okay. And I will assume that you understand my questions unless you ask me for a clarification. Okay?	8 Q. And to whom does Ms. Wallace report?
7	A. Okay.	9 MS. CLEMONS: Objection; foundation.
8	Q. Okay. And is there any reason you're unable to provide your truthful and accurate testimony here today?	10 THE WITNESS: Many people, but the administrator of CMS.
9	A. Okay.	11 BY MS. GOODMAN:
10	Q. And is there any reason you're unable to provide your truthful and accurate testimony here today?	12 Q. And who is the current administrator of CMS?
11	A. No.	13 A. Chiquita Brooks-LaSure.
12	Q. Okay. What is your current title?	14 Q. And how long has Ms. LaSure been the administrator at CMS?
13	A. Director of the Strategic Marketing Group in the Office of Communications at the Centers for Medicare and Medicaid Services.	15 MS. CLEMONS: Objection; foundation.
14	Q. And what are your responsibilities as the director of the Strategic Marketing Group at the Office of Communications at the Centers for Medicare and Medicaid Services?	16 THE WITNESS: I don't know when she was confirmed.
15	A. When -- this federal agency is responsible for Medicare, Medicaid and other	17 BY MS. GOODMAN:
16		18 Q. Okay. How many administrators of CMS have you worked under over the course of your time as director of SMG?
17		19 A. I could give you an approximate number.
18		20
19		21
20		22
21		23
22		24
23		25

## HIGHLY CONFIDENTIAL

	Page 10		Page 12
1	I'm sure I might be forgetting someone. Five or	1	Another is the Division of Digital Marketing.
2	six.	2	And the other one is the Division of Campaign
3	Q. And how about in the time period of 2019	3	Management.
4	to 2023, how many administrators have you worked	4	Q. Who is the head -- who is the division
5	under in that time period?	5	director of the Research Division?
6	A. There's one detail I can't remember, but	6	A. Clarese Astrin.
7	from confirmed administrators by the Senate would	7	Q. How long has Ms. Astrin been the
8	be two.	8	director of the Research Division?
9	Q. And what is the one detail you can't	9	A. I'm not sure exactly how many years it's
10	remember?	10	been.
11	A. Usually in between confirmed	11	Q. Can you approximate?
12	administrators there is a career administrator,	12	A. About 10 years.
13	and I cannot remember who that was or how many	13	Q. Okay. Who is the director of Digital
14	there were between the last two confirmed ones.	14	Marketing?
15	Q. Okay. And are the -- those career	15	A. Mark Krawczyk.
16	officials, are they serving in an acting	16	Q. How long has Mr. Krawczyk been the
17	capacity, in your experience?	17	director of Digital Marketing?
18	A. That is correct.	18	A. I'm not sure.
19	Q. And how many presidential	19	Q. Can you approximate?
20	administrations have you served under?	20	A. I can.
21	MS. CLEMONS: Objection; vague.	21	Q. What's your approximate --
22	THE WITNESS: Five.	22	A. Six to seven years.
23	BY MS. GOODMAN:	23	Q. Who is the director of the Campaign
24	Q. And are those both republican and	24	Management Division?
25	democratic administrations?	25	A. Barbara Johanson.
	Page 11		Page 13
1	A. Yes.	1	Q. And how long has Ms. Johanson been the
2	Q. Are you also an adjunct -- oh, strike	2	director of the Campaign Management Division?
3	that.	3	A. I'm not sure.
4	Who reports to you in your role as	4	Q. How about an approximation?
5	director of SMG?	5	A. Three years.
6	MS. CLEMONS: Objection; form.	6	Q. Prior to serving as director of the
7	THE WITNESS: Do you want the entire	7	Campaign Management Division, did Ms. Johanson
8	list of people or my immediate reports?	8	have a role in the SMG?
9	BY MS. GOODMAN:	9	A. Yes.
10	Q. Let's go with your direct reports,	10	Q. What was her role prior to becoming
11	please.	11	director of the Campaign Management Division?
12	A. Okay. There would be three division	12	A. She was an analyst within that division
13	directors, a special assistant, a deputy director	13	that she now directs.
14	and an office administrator.	14	Q. And who is the deputy director that
15	Q. And has that -- those one, two, three,	15	reports to you?
16	four, five -- have you always had six direct	16	A. Laura Salerno.
17	reports in your time as director of SMG?	17	Q. How long has she been the direct
18	A. I'm not sure.	18	-- deputy director at SMG?
19	Q. How about in the time period of 2019 to	19	A. I'm not sure.
20	2023, have you always had six direct reports?	20	Q. How about an approximation?
21	A. Yes.	21	A. Three to four years.
22	Q. Okay. Who are the -- what are the three	22	Q. Prior to being the deputy director, did
23	divisions which report up to you as director of	23	Ms. Salerno have a job in the SMG?
24	SMG?	24	A. Yes, she did.
25	A. One of them is the Division of Research.	25	Q. What was her role prior to becoming the

4 (Pages 10 - 13)

## HIGHLY CONFIDENTIAL

	Page 14		Page 16
1	deputy director?	1	campaigns.
2	A. She was the division director at the	2	BY MS. GOODMAN:
3	division of Campaign Management.	3	Q. What are "direct response digital
4	Q. Ah. So Ms. Johanson succeeded	4	marketing campaigns"?
5	Ms. Salerno in that role; is that correct?	5	A. That's when you reach to individuals
6	A. There would be points of clarification	6	directly, not through advertising, so, say,
7	on that, but for this purpose, yes.	7	email, texting, maybe auto dials.
8	Q. What are the points of clarification	8	Q. And so the Digital Marketing Division's
9	that you're -- you're referencing?	9	direct response campaigns do not involve
10	A. Immediately following Laura becoming the	10	advertising agencies. Is that accurate?
11	deputy director, we went through a few people on	11	MS. CLEMONS: Objection; form.
12	detail to -- as it takes time to post a	12	THE WITNESS: You know, there's gray
13	position --	13	area for everything. I wouldn't -- could you
14	Q. Got it.	14	rephrase the question, please?
15	A. -- and for people to compete.	15	BY MS. GOODMAN:
16	Q. What are the responsibilities of the	16	Q. In order to execute their direct
17	Campaign Management Division?	17	response marketing campaigns, does the Digital
18	A. There are many. Is there -- would -- do	18	Marketing Division engage with advertising
19	you want to be more specific?	19	agencies via a contract?
20	Q. Could you please start with a summary of	20	MS. CLEMONS: Objection to form.
21	the responsibilities of the Campaign Management	21	THE WITNESS: Yes.
22	Division?	22	BY MS. GOODMAN:
23	MS. CLEMONS: Objection to form.	23	Q. What advertising agencies do they engage
24	THE WITNESS: I could, but I'm wondering	24	with?
25	what part you would like me to summarize.	25	A. Weber Shandwick, Elevation, and my other
	Page 15		Page 17
1	BY MS. GOODMAN:	1	one would be a guess.
2	Q. I want to understand at first a	2	Q. Okay.
3	high-level summary of what the Campaign	3	A. So I'm not a hundred percent sure. In
4	Management respons -- division's responsibilities	4	fact, I don't think so.
5	are.	5	Q. The services that Weber Shandwick
6	MS. CLEMONS: Objection to form.	6	and Elevation provide to the Digital Marketing
7	BY MS. GOODMAN:	7	Division, are those under the same contracts
8	Q. And then I can ask further questions	8	between CMS and those advertising agencies that
9	from there to drill down on what I'm hoping to	9	the Campaign Management Division uses?
10	learn from your testimony here today. Okay?	10	MS. CLEMONS: Objection to form.
11	A. Okay. They manage the campaigns that	11	THE WITNESS: I'm trying to think
12	we conduct to serve people who need access to	12	through time periods. Sorry.
13	healthcare.	13	No.
14	Q. And by "campaigns," what do you mean?	14	BY MS. GOODMAN:
15	A. Programs designed to reach our audiences	15	Q. So is it accurate that the Digital
16	and inform them of the actions they need to take	16	Marketing Division goes through a separate
17	so that they can access healthcare.	17	contract with Weber Shandwick, for example, in
18	Q. And same -- same question for the	18	order to use advertising services for its work as
19	Digital Marketing Division. What as a -- can	19	compared to the Campaign Management Division?
20	you provide a high-level summary of the Digital	20	MS. CLEMONS: Objection to form. Calls
21	Marketing di -- division's responsibilities?	21	for a legal conclusion.
22	MS. CLEMONS: Objection; form.	22	THE WITNESS: No.
23	THE WITNESS: Digital Marketing is	23	BY MS. GOODMAN:
24	responsible for most of the agency's social media	24	Q. Okay.
25	and our direct response digital marketing	25	A. The purpose there is not to actually do

5 (Pages 14 - 17)

## HIGHLY CONFIDENTIAL

	Page 110		Page 112
1	But it demonstrated that the outreach resulted in	1	that could be the problem with my thinking, but
2	-- and this is the number I'm not -- but resulted	2	display advertising has actually appeared, in my
3	in many people getting health coverage.	3	memory, from best that I can recall, to become
4	BY MS. GOODMAN:	4	more impactful.
5	Q. As compared to the prior year?	5	Q. In what ways that you can recall has
6	A. We did not do Mixed Media Modeling the	6	display advertising become more impactful?
7	private -- prime -- the previous year, so as	7	A. Best of my recollection, return on
8	related to the number of uninsured people, --	8	investment appears to be higher.
9	Q. Got it.	9	Q. And what return on investment are you
10	A. -- the audience at that time. And other	10	tracking with respect to display advertising in
11	factors that could also increase enrollment.	11	the Open Enrollment campaigns?
12	Q. What are the other factors that could	12	MS. CLEMONS: Objection to form.
13	also increase enrollment to which you're	13	THE WITNESS: We have primarily three
14	referring?	14	methods for looking at the role of display.
15	A. For a set number of years, a law was	15	Method Number 1 is looking at the people who
16	passed that impacted the tax breaks that people	16	directly interact with the ad, so what we often
17	could get for having health insurance, thereby	17	call last-click attribution. Method Number 2 is
18	reducing their premiums for the health insurance.	18	multi-source attribution; still within the
19	Q. So over the time period at issue, or	19	digital realm. And Method Number 3 is the Mixed
20	that I'm focusing on in this case, 2019 to 2023,	20	Media Modeling.
21	it's fair to say that the budget available for	21	BY MS. GOODMAN:
22	advertising and outreach has increased, correct?	22	Q. And so in what ways has the return on
23	MS. CLEMONS: Objection; form.	23	investment according to those methods gotten
24	THE WITNESS: Yes.	24	higher? Like, what changes are you seeing in
25	BY MS. GOODMAN:	25	those metrics vis-a-vis return on investment?
	Page 111		Page 113
1	Q. Okay. And how have you, in the	1	MS. CLEMONS: Objection; form.
2	Strategic Marketing Group, made decisions about	2	Foundation.
3	how to spend those additional dollars over that	3	THE WITNESS: To the best of my
4	time period?	4	recollection, we are seeing an ability to
5	MS. CLEMONS: Objection; form.	5	attribute more application starts, and that is
6	THE WITNESS: We considered the audience	6	the number of people who would actually be
7	and how best to reach them, and we -- and we	7	applying for the tax break to help them pay for
8	distribute the funds accordingly.	8	their health insurance, and more enrolling due to
9	BY MS. GOODMAN:	9	display ads, to the best of my recollection.
10	Q. And what changes have you observed with	10	BY MS. GOODMAN:
11	respect to how best to reach the audiences you're	11	Q. Have you observed any changes with
12	trying to reach over the 2019 to '23 time period	12	respect to meeting the audience you're trying to
13	as part of the Open Enrollment campaigns?	13	reach with respect to video advertising in the
14	MS. CLEMONS: Objection; form.	14	2019 to '23 time period?
15	Foundation.	15	MS. CLEMONS: Objection; form.
16	THE WITNESS: I'm not sure the channel	16	THE WITNESS: I don't recall.
17	mix for most effectively reaching the audience	17	BY MS. GOODMAN:
18	during that time period, based on my observations	18	Q. Are there any other subtle changes that
19	of what would be best for reaching that audience,	19	you have observed over the 2019 to 2023 time
20	has changed significantly, more subtle changes.	20	period with respect to reaching the audience
21	BY MS. GOODMAN:	21	you're trying to reach for health -- Open
22	Q. And what are the subtle changes that you	22	Enrollment?
23	have observed?	23	MS. CLEMONS: Objection to form.
24	A. Over a time period, and this could be	24	THE WITNESS: I don't recall.
25	beyond the time period that you're mentioning, so	25	BY MS. GOODMAN:

29 (Pages 110 - 113)

## HIGHLY CONFIDENTIAL

Page 114	Page 116
<p>1 Q. Okay. How about the -- have you 2 observed any changes in the availability of 3 advertising providers that you could use to reach 4 your audience over the 2019 to 2023 time period?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 THE WITNESS: I don't recall.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. So earlier we talked about a lot of the 9 different programmatic providers that CMS has 10 used.</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Do you recall that testimony?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Okay. With respect to those providers, 15 were they all available to CMS in the 2019 year 16 as compared to the 2023 year?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Are you aware of any advertising 21 providers who were not available to CMS in 22 2019 but who are available to CMS in 2023?</p> <p>23 MS. CLEMONS: Objection to form.</p> <p>24 THE WITNESS: I am not.</p> <p>25 BY MS. GOODMAN:</p>	<p>1 best of my recollection, that type of display 2 ad has increased in its value to us.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And how does CMS go about -- what 5 methods does CMS use to place these kinds of 6 prospecting display ads?</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 THE WITNESS: We direct our contractors 9 to do it on our behalf.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And do you direct them to use any 12 particular provider?</p> <p>13 MS. CLEMONS: Objection to form.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: We will direct them to use 16 particular providers.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Okay. So with respect to the increasing 19 effectiveness of prospecting display ads, what 20 providers have you used?</p> <p>21 MS. CLEMONS: Objection to form.</p> <p>22 THE WITNESS: Off the top of my mind, I 23 can think of two --</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Which are those?</p>
Page 115	Page 117
<p>1 Q. Okay. So one of the subtle changes 2 that you said you observed was that display has 3 become more impactful, correct? And when you say 4 "display," can you be more detailed about what 5 kind of display advertising you mean that has 6 become more impactful as in having a higher 7 return on investment?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 THE WITNESS: So kind of display really 10 covers a lot of categories, because there's 11 creative, there's delivery systems, there's 12 targeted. Do you have anything particularly in 13 mind?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. No. I want to understand what you mean 16 by "display being more impactful."</p> <p>17 A. All right.</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: So to the best of my 20 recollection, display ads that -- what we would 21 call -- I don't know. Let me see. I've gotta 22 think of the term here -- prospecting. So those 23 are the ads that go out and find people who could 24 benefit from the program, who may or may not have 25 ever interacted with the program before. To the</p>	<p>1 A. Which does not mean that there aren't 2 others.</p> <p>3 Q. Sure.</p> <p>4 A. So Google and MIQ.</p> <p>5 MS. GOODMAN: Shall we take a break for 6 lunch?</p> <p>7 MS. CLEMONS: Yeah.</p> <p>8 THE WITNESS: I'm good with whatever.</p> <p>9 THE VIDEOGRAPHER: The time is 12:22 10 p.m. This ends Unit 2. We're off the record. (Lunch recess taken.)</p> <p>11 (Exhibit No. 65, a document Bates 12 Numbered CMS-ADS-11906 through 11974, was 13 introduced.)</p> <p>14 THE VIDEOGRAPHER: The time is 1:14 p.m. 15 This begins Unit Number 3. We're on the record.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Mr. Koepke, I'm going to hand you a 18 document marked Exhibit 65, CMS-ADS-11906 through 19 11974.</p> <p>20 And this is a technical proposal from 21 Weber Shandwick for Healthcare.gov 2010 Open 22 Enrollment campaign, correct?</p> <p>23 A. I'm not sure. It's going to take me a 24 minute to look at it.</p>

30 (Pages 114 - 117)

## HIGHLY CONFIDENTIAL

	Page 118	Page 120
1	Q. Sure.	1 Marketing Group" incorrectly. It sounded correct
2	A. It appears as such.	2 to me.
3	Q. Okay. And what is the purpose of a	3 BY MS. GOODMAN:
4	technical proposal, to your knowledge?	4 Q. Okay. I don't understand what the
5	MS. CLEMONS: Objection; form.	5 detail with respect to the Strategic Marketing
6	THE WITNESS: A technical proposal is	6 Group led you to say no to my question.
7	part of a contracting process. So the offerers,	7 MS. CLEMONS: Objection to form.
8	which are the different ad agencies who might be	8 BY MS. GOODMAN:
9	interested in contracting with the federal	9 Q. Can you explain that to me?
10	government, would write a technical proposal to	10 A. Your question had three parts: Have I
11	show their abilities to meet the standards that	11 ever read a technical proposal. Is it about
12	the federal government has set forward.	12 advertising. And is it for the Strategic
13	BY MS. GOODMAN:	13 Marketing Group at CMS. I guess that's four
14	Q. And did multiple different contractors	14 parts.
15	compete each year for the Open Enrollment	15 The Strategic Marketing Group did not
16	campaign, or was it only Webber Shandwick?	16 exist when I read the technical proposals.
17	MS. CLEMONS: Objection to form.	17 Q. When did you read the technical
18	THE WITNESS: Each year?	18 proposals?
19	BY MS. GOODMAN:	19 MS. CLEMONS: Objection to form.
20	Q. Each year.	20 THE WITNESS: The early 2000s.
21	A. Okay. It was not always only Weber	21 BY MS. GOODMAN:
22	Shandwick, to the best of my knowledge. I'm	22 Q. So since the early 2000s, is it accurate
23	actually not a hundred percent sure, but -- so I	23 that you have not read the strat -- the technical
24	don't know.	24 proposals submitted by ad agencies?
25	Q. Okay. As the director of the Strategic	25 MS. CLEMONS: Objection to form.
	Page 119	Page 121
1	man -- Marketing Group, did you review technical	1 THE WITNESS: The technical proposals
2	proposals?	2 are written by -- are read and judged by trained
3	A. No, I did not.	3 staff who work for me.
4	MS. CLEMONS: Objection to form.	4 BY MS. GOODMAN:
5	THE WITNESS: I'm so sorry.	5 Q. Okay. And so your trained staff read
6	BY MS. GOODMAN:	6 and review them, but you do not; is that correct?
7	Q. Have you ever had occasion to read	7 A. That is correct.
8	them?	8 Q. Okay. Do you discuss the technical
9	MS. CLEMONS: Objection to form.	9 proposals with your staff?
10	THE WITNESS: Have I ever had the	10 A. I do not.
11	occasion to read a technical proposal of any	11 Q. Why not?
12	sort?	12 A. Because it is inappropriate for people
13	BY MS. GOODMAN:	13 judging a technical proposal to talk with other
14	Q. Of -- related to any advertising	14 people about it in the process of an acquisition.
15	campaign handled by the Strategic Marketing Group	15 Q. Why is that improper or inappropriate?
16	at CMS.	16 A. I would only be doing conjecture, but
17	A. You had a lot of very specific details	17 it's -- the government has a goal to be fair to
18	in that question that would lead me to say no.	18 all businesses. And so, therefore, the people
19	Q. What are the specific details in my	19 who read the proposals and judge them are doing
20	question that would lead you to say no?	20 so in a non-biased sense. And discussing with
21	A. One of them was the "Strategic Marketing	21 anyone else could -- could increase or add bias
22	Group."	22 to a process.
23	Q. Did I state that incorrectly?	23 Q. And which of your staff reviewed
24	MS. CLEMONS: Objection to form.	24 technical proposals for the Healthcare.gov Open
25	THE WITNESS: You did not say "Strategic	25 Enrollment campaigns in the '19 to '23 time

31 (Pages 118 - 121)

## HIGHLY CONFIDENTIAL

Page 218	Page 220
<p>1       thing. And -- and just describe other products      2       and ask us what our goals are, and what have you,      3       so that they would have a better understanding      4       about how -- about how their products could be      5       used, because, of course, they're trying to sell      6       their products.</p> <p>7       Q. Did you find those meetings to be      8       valuable?</p> <p>9           MS. CLEMONS: Objection to form.</p> <p>10          THE WITNESS: Valuable in what way?</p> <p>11          BY MS. GOODMAN:</p> <p>12          Q. Valuable to the work that you do at CMS      13       in advertising.</p> <p>14           MS. CLEMONS: Objection; form.</p> <p>15          THE WITNESS: I find them valuable, in      16       part, because it's really interesting to me to      17       see how people do their work. And, yes, some of      18       the data analytics that we've actually requested      19       that they've done for us have been valuable.</p> <p>20          BY MS. GOODMAN:</p> <p>21          Q. Despite these meetings also being an      22       opportunity for Google to explain how their      23       products could be used, because, of course,      24       they're trying to sell their products, does CMS      25       still make an independent decision about which</p>	<p>1       including Google, have a policy that an ad should      2       not -- what's the word I'm looking for -- mimic      3       -- that's not the word I'm looking for, but it's      4       like that, mimic some other existing      5       organization, or mimic the government when you're      6       not the government, basically.</p> <p>7       So, you know, an ad that says they're      8       Medicare, and they're not actually Medicare, is      9       misleading to people, and there are a lot of      10       those ads on Google. And so when we find them,      11       we send them and they -- we have conversations      12       about that.</p> <p>13       Q. And what steps, if any, do you ask      14       Google to take with respect to these ads -- these      15       search ads you're describing?</p> <p>16       A. Take them down immediately. Asked for      17       some monitoring support. I've asked for it.      18       That is what I've asked for.</p> <p>19       Q. And what -- what has Google, in return,      20       provided to you with respect to these search ads?</p> <p>21       A. Google has taken ads down when we find      22       them, and that is Whac-A-Mole because anybody can      23       put up an ad on Google if they've got a credit      24       card. Google has created new policies about      25       taking out ads for health insurance, and have met</p>
Page 219	Page 221
<p>1       advertising products or services to use?</p> <p>2           A. Absolutely, yes.</p> <p>3       Q. Okay. Anything else, sitting here      4       today, that you can recall about any      5       conversations you have had with any individual      6       from Google --</p> <p>7           MS. CLEMONS: Objection; form.</p> <p>8          BY MS. GOODMAN:</p> <p>9       Q. -- relative to CMS's advertising?</p> <p>10          MS. CLEMONS: Same objection.</p> <p>11          THE WITNESS: That's a lot to try to      12       recall. So it -- true specifics? No.      13       Conversations? Yes.</p> <p>14          BY MS. GOODMAN:</p> <p>15       Q. Any other types of conversations, other      16       than what we've discussed which you recall having      17       with Google?</p> <p>18           A. Yes. Thank you.</p> <p>19           Q. You're welcome.</p> <p>20           A. In the search ad -- in the search ad      21       arena, Google accepts ads -- or has accepted ads,      22       from people who try to look like the government.      23       And we discover these ads sometimes. And every      24       time I see one, I would send it to Kunal, to      25       Michelle. And -- because most digital companies,</p>	<p>1       with us about those policies.</p> <p>2       Q. So is it fair to say that Google is      3       taking steps to address CMS's concerns with      4       respect to search ads that mimic the government?</p> <p>5           MS. CLEMONS: Objection to form.</p> <p>6          THE WITNESS: It is fair to say Google      7       has taken steps with regard to search ads.</p> <p>8          BY MS. GOODMAN:</p> <p>9       Q. How about with respect to display ads?      10       Are you aware of any conduct on the part of      11       Google with respect to display ads that has      12       negatively impacted CMS's advertising?</p> <p>13          MS. CLEMONS: Objection to form. And I      14       would caution the witness not to -- to answer the      15       question if your answer would reveal privileged      16       communications with counsel.</p> <p>17          BY MS. GOODMAN:</p> <p>18       Q. Are you able to answer that question?</p> <p>19           A. No.</p> <p>20           Q. Prior to having any conversation with      21       any lawyer with respect to Google Ads, any lawyer      22       from the government, did you ever have any      23       concerns that Google was engaging in      24       anticompetitive conduct related to display      25       advertising?</p>

56 (Pages 218 - 221)

## HIGHLY CONFIDENTIAL

Page 222	Page 224
<p>1 MS. CLEMONS: Objection to form. Calls 2 for a legal conclusion.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And prior to any conversation with any 6 lawyer for the government, did you ever have any 7 concerns that Google was causing CMS to pay more 8 for display advertising than it should have been 9 paying?</p> <p>10 A. Could you rephrase that, please -- or 11 not rephrase. Just repeat it. That's what I 12 meant. I'm so sorry.</p> <p>13 Q. That's okay.</p> <p>14 A. I used the wrong word.</p> <p>15 Q. Prior to any conversation with any 16 lawyer for the government, did you ever have any 17 concerns that Google was causing CMS to pay more 18 for display advertising than it should have been 19 paying?</p> <p>20 MS. CLEMONS: Objection; form.</p> <p>21 THE WITNESS: The tough part here is 22 "should have been paying." That's an -- a really 23 -- that suggests a lot of information.</p> <p>24 That being said, yes.</p> <p>25 BY MS. GOODMAN:</p>	<p>1 BY MS. GOODMAN: 2 Q. -- who charge on such a basis, to your 3 knowledge?</p> <p>4 MS. CLEMONS: Same objection.</p> <p>5 THE WITNESS: There are other providers.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. And do you have the same concerns with 8 respect to providers other than Google who charge 9 on a cost-per-impression basis?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Okay. Has anybody at any advertising 14 agency with whom CMS works ever told you that 15 Google was engaging in anticompetitive conduct 16 related to display advertising?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Okay. So sitting here today, and prior 19 to any conversation with any lawyer for the 20 government, can you recall any concerns you've 21 ever had with respect to Google's conduct and its 22 affect on CMS's display advertising purchases?</p> <p>23 MS. CLEMONS: Objection to form.</p> <p>24 THE WITNESS: Extremely informal 25 conversations between me and my colleagues.</p>
Page 223	Page 225
<p>1 Q. And what -- what concerns did you have 2 with respect to Google causing CMS to pay more 3 for display advertising than it should have been 4 paying prior to any conversation with a lawyer 5 for the government?</p> <p>6 A. It is possible -- in fact, indeed, 7 probable, that when you are purchasing ads on a 8 cost-per-impression basis, that you're buying 9 things that are not useful to you.</p> <p>10 Q. And so in what ways has Google, to your 11 knowledge, caused you to buy things that are not 12 useful to you on a cost-per-impression basis?</p> <p>13 And when I say you, I mean CMS.</p> <p>14 MS. CLEMONS: Objection to form.</p> <p>15 THE WITNESS: It has been a concern that 16 we have discussed. Whether it is -- the way you 17 put the question was, like, pure knowledge. 18 Because other ways to potentially buy, which we 19 have not been able to do, would be to buy based 20 on outcomes instead of impressions.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. And is Google the only provider that you 23 buy ads on an impression basis for, or are there 24 other providers --</p> <p>25 MS. CLEMONS: Objection to form.</p>	<p>1 BY MS. GOODMAN: 2 Q. And what extremely informal 3 conversations between you and your colleagues are 4 you referencing?</p> <p>5 A. Ones where we notice that all 6 the digital ads that we place go through 7 double-click; that the analytics come through 8 Google analytics. There just seems to be a lot 9 of Google along the ways. And we've had those 10 comments, conversations and we just move on. 11 Because, in the end of the day, we're just doing 12 our jobs.</p> <p>13 Q. And have you rai -- ever raised those 14 conversations with anybody outside of your 15 colleagues?</p> <p>16 MS. CLEMONS: Objection to the extent 17 that question calls for privileged communications 18 with counsel. If you're -- if you can answer 19 without referencing or being informed by 20 privileged communications with counsel, you 21 may do so.</p> <p>22 THE WITNESS: Sorry. I'm just trying to 23 think and remember. It's mental gymnastics at 24 this point. So --</p> <p>25 BY MS. GOODMAN:</p>

## HIGHLY CONFIDENTIAL

	Page 250		Page 252
1	Q. Was it in 2023 or 2022?	1	Microsoft Teams invite for a meeting. Subject:
2	A. I believe it was in 2023.	2	DOJ HHS CMS call regarding online advertising
3	Q. And how did you become aware in 2023 of	3	purchasing, which you are on in the "To" line,
4	an investigation by the Department of Justice	4	correct?
5	into Google?	5	A. I'm trying to get the subject. I will
6	MS. CLEMONS: Objection; privileged.	6	say what is correct is that I am on the "To"
7	And I'm going to instruct the witness not to	7	line.
8	answer to the extent that your answer would be	8	Ah, there's the subject. Sorry.
9	informed by or reveal privileged communications	9	DOJ HHS CMS call regarding online
10	with counsel.	10	advertising purchasing, so, yes, correct.
11	BY MS. GOODMAN:	11	Q. And this -- did you recall -- do you
12	Q. Are you able to answer that question,	12	recall participating in this call on January 6th,
13	sir?	13	2023?
14	A. No.	14	A. Yes.
15	Q. Okay. So is it fair to say, then, you	15	Q. Okay. And to your recollection, did the
16	became aware of an investigation by DOJ through	16	call last the 30 minutes between 3 and 3:30 p.m.
17	lawyers?	17	as reflected on this meeting invite?
18	MS. CLEMONS: Objection. Calls for	18	A. I do not recollect.
19	privileged information. I'm going to instruct	19	Q. Okay. Do you think it lasted longer or
20	the witness not to answer.	20	shorter than that amount of time?
21	MS. GOODMAN: I'm not asking for the	21	A. I do not recollect.
22	communications. I'm asking for how he learned of	22	Q. Okay. Did you understand the purpose of
23	something. The fact of learning it from lawyers	23	this call to -- for DOJ to understand how CMS
24	is not privileged, one way or another. I'm not	24	buys online ads?
25	asking for the communications by which he learned	25	MS. CLEMONS: Objection. To the
	Page 251		Page 253
1	of it. I'm not asking for the substance of any	1	extent that question calls for privileged
2	discussions. I'm asking for how he learned this	2	communications with counsel, I'm going to
3	fact.	3	instruct the witness not to answer if your answer
4	MS. CLEMONS: You are assuming that he	4	would be informed by communications with counsel.
5	learned something and then asking whether he	5	BY MS. GOODMAN:
6	learned that fact through communications with	6	Q. Are you able to answer that question?
7	counsel, which is the topic of the communication	7	A. I'm going to take counsel's direction.
8	with counsel through which someone would learn	8	Q. Okay. So the only knowledge you have as
9	something.	9	to the purpose of this call is from lawyers; is
10	MS. GOODMAN: And it's the same kind of	10	that correct?
11	thing that would appear on a privilege log. It	11	MS. CLEMONS: You can answer yes or no.
12	doesn't delve into the substance of the	12	THE WITNESS: I don't recall.
13	communications.	13	BY MS. GOODMAN:
14	MS. CLEMONS: I'm going to instruct the	14	Q. Okay. Sitting here today, can you think
15	witness not to answer.	15	of any other source, other than communications
16	BY MS. GOODMAN:	16	with counsel, that informed your understanding of
17	Q. Okay. Are you going to follow that	17	the purpose of this call in Exhibit 71 on January
18	instruction?	18	6th, 2023?
19	A. Yes.	19	MS. CLEMONS: I'm going to object to the
20	Q. Okay.	20	extent it calls for communications with other CMS
21	MS. GOODMAN: Can I have Tab 3?	21	employees that were directed by counsel. So you
22	(Exhibit No. 71, a document Bates	22	may answer so long as your answer would not
23	Numbered CMS-ADS-189390, was introduced.)	23	reveal privileged communications with counsel or
24	BY MS. GOODMAN:	24	directed by counsel.
25	Q. Exhibit 71, CMS-ADS-189390. This is a	25	BY MS. GOODMAN:

64 (Pages 250 - 253)

## HIGHLY CONFIDENTIAL

Page 254	Page 256
1 Q. Can you answer that question? 2 A. I'm going to take counsel's instruction. 3 Q. Okay. Well, she said you may answer as 4 long as your answer would not reveal privileged 5 communications with counsel or directed by 6 counsel, so can you answer? 7 A. By saying I'm taking the instruction, 8 I'm taking the second half of that, that it is 9 privileged communication. 10 Q. Okay. How do you know if any 11 communications that you have had with any 12 CMS employee are directed by counsel? 13 MS. CLEMONS: Objection to the 14 extent that your answer would be informed by 15 communications with counsel, or communications 16 with other CMS employees that were directed by 17 counsel, I'm going to instruct the witness not to 18 answer. 19 BY MS. GOODMAN: 20 Q. Can you answer that question, sir? 21 A. I cannot. 22 Q. Okay. At the time of this meeting, 23 January 6th, 2023, did you have any personal 24 view on participating in a conversation with the 25 Department of Justice on the topic of online	1 MS. CLEMONS: Objection; form. 2 Foundation. 3 THE WITNESS: Not particularly. 4 BY MS. GOODMAN: 5 Q. Okay. When -- at the time of this 6 communication in January 2023, did you anticipate 7 that CMS would be involved in a lawsuit against 8 Google? 9 MS. CLEMONS: Objection. I'm going 10 to instruct the witness not to answer to the 11 extent that your answer would be informed by 12 communications with counsel or at the direction 13 of counsel. 14 BY MS. GOODMAN: 15 Q. Can you answer that question? 16 A. I cannot. 17 Q. Okay. Did anybody -- this is a yes or 18 no question. Did any lawyer direct you to have 19 any conversations about online advertising in the 20 time period of January 2023? 21 MS. CLEMONS: Objection. I'm going to 22 instruct the witness not to answer as that calls 23 for privileged communications with counsel and 24 their substance. 25 BY MS. GOODMAN:
Page 255	Page 257
1 advertising purchasing? 2 MS. CLEMONS: Objection to form. And 3 I'm also going to instruct the witness not to 4 answer if your answer would reveal the 5 com -- privileged communications with counsel. 6 THE WITNESS: No. 7 BY MS. GOODMAN: 8 Q. So setting aside any conversations with 9 any lawyer, I'm asking for your personal view on 10 having to participate in a conversation with 11 regard to online advertising purchasing. Did you 12 have a personal view one way or the other? 13 MS. CLEMONS: Objection to form. 14 THE WITNESS: No. 15 BY MS. GOODMAN: 16 Q. Did you want to participate in that 17 call? 18 A. That's a different question. 19 Q. Okay. What's the answer to that 20 question? 21 A. Sort of. 22 Q. Why do you say "sort of"?	1 Q. Are you following that instruction? 2 A. Yes, I am. 3 Q. Okay. 4 MS. GOODMAN: Can I have Tab 4? 5 BY MS. GOODMAN: 6 Q. Much earlier in the day we talked about 7 weekly meetings that you have with your team. Do 8 you recall that testimony? 9 A. I do. 10 Q. Okay. Has the subject of CMS's online 11 advertising purchases ever been a topic of such 12 weekly meetings in the January 2023 time period 13 to your recollection? 14 A. I do not -- 15 MS. CLEMONS: Objection to the extent 16 that it would call for conversations directed by 17 counsel, or made at the request of counsel. 18 You may answer if the answer would not 19 be informed by conversations with counsel or 20 directed by counsel. 21 THE WITNESS: I do not recall. We 22 clearly talk about online advertising a lot. So 23 whether we talked about it in January or not, the 24 odds are high, yes. 25 ///

65 (Pages 254 - 257)

## HIGHLY CONFIDENTIAL

Page 258	Page 260
1        (Exhibit No. 72, a document Bates 2        Numbered CMS-ADS-64968 through 64971, was 3        introduced.) 4        BY MS. GOODMAN: 5        Q. Okay. I'm going to hand you Exhibit 72, 6        CMS-ADS-64968 through 64971. And this is an 7        email that was sent to you on January 11th, 2023, 8        correct? 9        A. Yes. 10      Q. Okay. And the subject is SMG Weekly 11     Agenda. Do you see that? 12      A. Yes. 13      Q. Is this the weekly agenda for the 14     full Strategic Marketing Group meetings that we 15     discussed at the beginning of the deposition? 16      A. No, it is not. 17      Q. Okay. For what group -- for what weekly 18     meeting is this the agenda? What category of 19     weekly meeting? 20      A. This is the agenda for a meeting between 21     me and my boss. 22      Q. Okay. How do you know that? 23      A. The SMG Weekly Meeting is the title of 24     the meeting between my boss and I. 25      Q. Okay. And your boss is not on this	1        BY MS. GOODMAN: 2        Q. Are you following that instruction? 3        A. Yes, I am. 4        Q. Okay. Did you discuss antitrust online 5        advertising with any of the individuals on this 6        email, the individuals in the "From" or the "cc" 7        or the "To" line? 8        MS. CLEMONS: Objection. Calls for 9        privileged information and communications. I'm 10      going to instruct the witness not to answer to 11      the extent that your answer would be informed or 12      directed by privileged communications with 13      counsel. 14      BY MS. GOODMAN: 15      Q. Are you able to answer that question, sir? 16      A. No, I am not. 17      Q. Mm-hmm. 18      And is that because, to the extent you 19      discussed antitrust online advertising with any 20      of the individuals on this email, that it was 21      done -- that it was informed or directed by 22      communications with counsel? 23      MS. CLEMONS: Objection. I'm going 24      to instruct the witness not to answer as that
Page 259	Page 261
1        email, correct? 2        A. That is correct. 3        Q. Okay. Who puts together this weekly 4        agenda for your meeting with your boss? 5        A. It is put together by me and my team. 6        Q. Okay. And you see the second bullet 7        here, Antitrust Online Advertising - Google 8        Banner Ads. What is that a reference to? 9        MS. CLEMONS: Objection. Calls for 10      privileged information. I'm going to instruct 11      the witness not to answer. 12      BY MS. GOODMAN: 13      Q. Are you following that instruction? 14      A. Yes, I am. 15      Q. Okay. Does this bullet exist on this 16      agenda at the direction of any lawyer? 17      A. I don't recall. 18      Q. Okay. Did any lawyer ask you to discuss 19      antitrust online advertising with your boss -- 20      MS. CLEMONS: Objection. 21      BY MS. GOODMAN: 22      Q. -- at this time period? 23      MS. CLEMONS: Calls for privileged 24      communications with counsel. I'm going to 25      instruct the witness not to answer.	1        question calls for the substance of privileged 2        communications with counsel. 3        BY MS. GOODMAN: 4        Q. Are you following that instruction? 5        A. Yes, I am. 6        MS. GOODMAN: Okay. Ms. Clemons, 7        you understand that these questions are all 8        directed at establishing whether you've met the 9        evidentiary basis for invoking a privilege? And 10      so by preventing the witness from answering the 11      questions, you have actually precluded any record 12      on whether a privilege applies. 13      MS. CLEMONS: What you are asking is for 14      the witness to tell you what he talked to or did 15      not talk to counsel about. And we are perfectly 16      capable of establishing a record outside of you 17      asking the witness to describe his communications 18      with counsel. 19      MS. GOODMAN: I'm not asking him 20      to describe with any detail that reveals any 21      substance of any communications. I am asking for 22      the kind of information that would appear on a 23      privilege log that is necessary for you to 24      support a claim of privilege. And so I would 25      ask you to revisit your objections so that the

66 (Pages 258 - 261)

## HIGHLY CONFIDENTIAL

Page 262	Page 264
1        witness can provide his under oath, sworn 2        testimony about whether a privilege applies.	1        BY MS. GOODMAN: 2            Q. Okay. So, sir, did you have any 3            conversations with Debra Hoffman about online 4            antitrust advertising? 5            A. Yes. 6            Q. Okay. What were the conversations you 7            had with Ms. Hoffman about antitrust online 8            advertising?
3            MS. CLEMONS: And I'm going to instruct 4            the witness not to reveal the substance of 5            communications with counsel, --	9            MS. CLEMONS: Objection. I'm going 10          to instruct the witness not to answer to the 11          extent that your answer would be informed by 12          communications with counsel or reveal the 13          substance of directions of counsel.
6            MS. GOODMAN: Okay.	14          BY MS. GOODMAN: 15            Q. Are you following that instruction? 16            A. Yes, I am.
7            MS. CLEMONS: -- or communications at 8            the direction of counsel.	17            Q. Okay.
9            MS. GOODMAN: Or communications informed 10          by counsel, correct?	18            MS. GOODMAN: Can I have Tab 6?
11          MS. CLEMONS: Yes.	19            MS. CLEMONS: We've actually been going 20          over an hour, so it might be time for a break.
12          MS. GOODMAN: So anything within the 13          penumbra of communications with counsel you will 14          instruct the witness not to answer, correct?	21            THE WITNESS: Just kind of split it up. 22          What, we've got about an hour left, then?
15          MS. CLEMONS: I'm not sure exactly what 16          you mean by "penumbra of communications with 17          counsel," but, yes.	23          MS. GOODMAN: Sure. Let's take a break.
18          MS. GOODMAN: Okay.	24          THE VIDEOGRAPHER: The time is 5:25 p.m.
19          BY MS. GOODMAN:	25          This ends Unit 5.
20          Q. Did you speak to Debra Hoffman about 21          antitrust online advertising?	
22          MS. CLEMONS: Objection. I'm going to 23          instruct the witness not to answer as that 24          question calls for the substance of privileged 25          communications with counsel or communications	
1        directed by counsel.	1        (Recess taken.)
2        BY MS. GOODMAN:	2        THE VIDEOGRAPHER: Time is 5:40 p.m.
3            Q. Did anybody direct you to speak to Debra 4            Hoffman about antitrust online advertising?	3        This begins Unit Number 6. We're on the record.
5            MS. CLEMONS: Same objection.	4            (Exhibit No. 73, a document Bates 5            Numbered CMS-ADS-440295, was introduced.)
6        BY MS. GOODMAN:	6        BY MS. GOODMAN:
7            Q. Yes or no.	7            Q. Mr. Koepke, I'm handing you Exhibit 73, 8            CMS-ADS-440295.
8            MS. CLEMONS: Instruct the witness not 9            to answer.	9            A. Thank you.
10          BY MS. GOODMAN:	10          Q. You're welcome.
11          Q. It's a yes or no question. Did anybody 12          direct you to have a conversation with Debra 13          Hoffman about antitrust online advertising?	11          And this is an email you received on 12          January 18th, 2023. Subject: Barb's two 13          -- two-on-one agenda, correct?
14          MS. CLEMONS: Objection. I'm going to 15          instruct the witness not to answer.	14          A. Yes.
16          BY MS. GOODMAN:	15          Q. The third bullet, Antitrust, do you know 16          what that's a reference to?
17          Q. Are you following that instruction, sir?	17          MS. CLEMONS: Objection. I'm going to
18          A. Yes, I am.	18          instruct the witness not to answer to the extent 19          your answer would be informed by privileged 20          communications with counsel.
19          Q. Okay. And will you answer, sir, one way 20          or another, whether you had any conversations 21          with Debra Hoffman about online antitrust 22          advertising?	21          BY MS. GOODMAN:
23          MS. CLEMONS: You could answer that yes 24          or no.	22          Q. Are you able to answer that question 23          without relying on privilege communications with 24          counsel?
25          THE WITNESS: Yes.	25          A. No, I'm not.

67 (Pages 262 - 265)

## HIGHLY CONFIDENTIAL

Page 266	Page 268
1 Q. Okay. Did you have discussions on the 2 topic of antitrust online advertising with any 3 individuals within the Strategic Marketing Group?	1 no? 2 A. I cannot answer that question. 3 Q. Okay.
4 MS. CLEMONS: Objection. And I'm going 5 to instruct the witness not to answer to the 6 extent your answer would reveal communications 7 with counsel or actions taken at the direction of 8 counsel.	4 MS. GOODMAN: I'll take 57 -- 58. 5 (Exhibit No. 74, a document Bates 6 Numbered CMS-ADS-531032 through 531072, was 7 introduced.) 8 BY MS. GOODMAN: 9 Q. I'm handing you Exhibit 74, 10 CMS-ADS-531032 through 531072. And this is an 11 email you sent on January 12th, 2023, to Holly 12 Baier, correct?
10 Q. So my question is a simple yes or no 11 question: Did you have discussions on the 12 topic of antitrust online advertising with any 13 individuals within the Strategic Marketing Group?	13 A. Holly Baier, yes. 14 Q. Holly Baier. Okay. Who is Holly Baier? 15 A. Holly Baier is the special assistant in 16 the Strategic Marketing Group.
14 Based on your client -- your counsel's 15 instruction, are you able to answer that question 16 yes or no?	17 Q. Okay. And the second email down in the 18 thread you write, "Hi, guys. I think we share 19 this information. D1 shows how we account for 20 funds. I just think we should see if we could 21 block out names and their respective hourly 22 rates. What do you think." Do you see that? 23 A. I do see that. 24 Q. Okay. When you say, "I think we share 25 this information," who are you referring to
Page 267	Page 269
1 A. Yes. 2 Q. Which individuals? 3 MS. CLEMONS: I'm going to caution the 4 witness not to answer if your answer would reveal 5 communications with counsel or actions taken at 6 the direction of counsel. 7 BY MS. GOODMAN: 8 Q. Are you able to answer that question, 9 sir? 10 A. No, I am not. 11 Q. So you cannot answer the names of 12 the people who you spoke with within Strategic 13 Marketing Group on the topic of antitrust online 14 advertising? 15 A. That is correct. 16 Q. Okay. Did you have discussions with 17 anybody at any advertising agency working for CMS 18 on the topic of antitrust online advertising?	1 sharing this information with? 2 MS. CLEMONS: I'm going to object. To 3 the extent that your answer would be informed by 4 communications with counsel or reveal the 5 direction of counsel, and if you have any 6 questions about where those lines might be or 7 whether something would reveal the directions of 8 counsel, we could take a break, if you need to. 9 THE WITNESS: I do not need to take a 10 break, so many questions on the table. 11 I'm taking advice of counsel. 12 BY MS. GOODMAN: 13 Q. Okay. So you cannot answer the question 14 who are you -- you cannot answer, one way or the 15 other, based on the instruction of your lawyer, 16 who you are referring to when you say, "I think 17 we share this information." Is that acc -- am I 18 getting that correct? 19 A. That is correct. 20 Q. Okay. Why did you want to block out 21 names and their respective hourly rates? 22 A. Let's see. What was the date on this? 23 Q. January 12th, 2023. 24 A. January 12th. 25 At this time, January 12th, we were

68 (Pages 266 - 269)

## HIGHLY CONFIDENTIAL

1 deposition is over and that Google does not have 2 grounds to hold the deposition open. 3 MS. GOODMAN: Okay. Thank you for your 4 time, Mr. Koepke. 5 THE WITNESS: It was my pleasure. This 6 was fun. 7 THE VIDEOGRAPHER: Time is 6:23 p.m. 8 We're off the record. 9 (Deposition concluded -- 6:23 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 290 Page 292 1 Katherine Clemons Esq 2 Katherine.clemons@usdoj.gov 3 August 22nd, 2023 4 RE: United States, Et Al v. Google, LLC 5 8/21/2023, Christopher Koepke (#6043164) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 (erratas-cs@veritext.com). 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 291 Page 293 1 United States, Et Al v. Google, LLC 2 Christopher Koepke (#6043164) 3 E R R A T A S H E E T 4 PAGE____ LINE____ CHANGE_____ 5 _____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE_____ 8 _____ 9 REASON_____ 10 PAGE____ LINE____ CHANGE_____ 11 _____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE_____ 14 _____ 15 REASON_____ 16 PAGE____ LINE____ CHANGE_____ 17 _____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE_____ 20 _____ 21 REASON_____ 22 _____ 23 _____ 24 Christopher Koepke Date 25

74 (Pages 290 - 293)

HIGHLY CONFIDENTIAL

Page 294

1 United States, Et Al v. Google, LLC

2 Christopher Koepke (#6043164)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Christopher Koepke, do hereby declare that I  
5 have read the foregoing transcript, I have made any  
6 corrections, additions, or changes I deemed necessary as  
7 noted above to be appended hereto, and that the same is  
8 a true, correct and complete transcript of the testimony  
9 given by me.

10

11 \_\_\_\_\_

12 Christopher Koepke Date

13 \*If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_.  
16

17

18 \_\_\_\_\_

19 NOTARY PUBLIC

20

21

22

23

24

25

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).